Exhibit 2

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

Before The Honorable Lisa J. Cisneros, Magistrate Judge

HOMYK,

Plaintiff,

vs.

CHEMOCENTRYX, INC., et al.,

Defendants.

No. C 21-03343-JST

San Francisco, California
Tuesday, July 30, 2024

TRANSCRIPT OF PROCEEDINGS OF THE OFFICIAL ELECTRONIC SOUND RECORDING 11:13 - 11:52 = 39 MINUTES

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Tuesday, July 30, 2024 11:13 a.m

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THE CLERK: Please come to order. The U.S. District Court is now in session. The Honorable Magistrate Judge Lisa J. Cisneros is presiding. We are calling Civil matter 21-cv-03343.

Counsel, please state your appearances for the record, beginning with Plaintiff.

MR. USLANER (via Zoom): Good morning, your Honor. Jonathan Uslaner from Bernstein Litowitz Berger and Grossmann for Lead Plaintiff Indiana Employment Retirement System and the class.

THE COURT: Thank you.

MR. DENTON (via Zoom): Good morning, your Honor. Sorry. Blake Denton from Latham and Watkins for the Defendants.

THE COURT: Thank you.

So I've got a question just right off the bat for the Lead Plaintiff with respect to this discovery dispute. You know, both sides served subpoenas on the five analyst firms just a few months ago, you know, so that creates this impression that something happened during discovery that made both sides believe that these five analyst firms were important and perhaps more important than the other 17

analyst firms that had covered ChemoCentryx during the class period. So, you know, for Lead Plaintiffs, why did you subpoena the firms?

MR. USLANER: Yes, your Honor. We subpoenaed the firms in response to Defendants subpoenaing these firms. Unlike all of the other witnesses at issue in this motion, Defendants did subpoena these five analyst firms.

THE COURT: Okay. Well, how did -- how do you reconcile that with your argument that you had no way of knowing that Defendants could call these five firms at trial?

MR. USLANER: So with respect to the firms, your Honor, we have two responses.

Number one, in their disclosures, which we note in our letter brief, Defendants didn't identify who at the analyst firms they intend on using at trial, which is contrary to the rules with respect to disclosures.

And then with respect to their service of these subpoenas to these analysts, we recognize, your Honor, that unlike with respect to the other witnesses, the Defendants did indeed issue subpoenas to these folks. Those subpoenas were issued very late in the process, and there's no indication that there -- through those issuance of those subpoenas that they were indeed going to rely upon them at trial, given that there were many other potential analysts

and analyst firms that they could use.

THE COURT: So it seems like you're saying because you didn't know the names of the individuals?

MR. USLANER: Yes, your Honor, with respect to the analyst firm, the disclosures were incomplete and insufficient because they did not provide the individuals' names, which violates rule 26. And there are cases that we cite in our letter brief which indicate that in such circumstances, the disclosure of the mere entity's name is insufficient because we have no ability to conduct depositions or discovery on that particular individual, including, for example, obtaining documents from Defendants about their communications with that individual, including seeking a deposition of the individual. None of these -- none -- no individual at any of the analyst firms have been deposed. The only instance in which any analyst is potentially being deposed within the fact period is one that is occurring on the last day of the fact period. All of the other analysts who Defendants have sought to depose, they have done this at the very tail end of discovery with just a couple of days left. And those depositions, according to Defendants, they're trying to seek to take those outside the discovery period, and we believe that that as well is improper and highly prejudices us, including because we received these documents at the very tail end.

THE COURT: Okay.

MR. DENTON: Your Honor, would you like me to respond now, or would you like me to wait until the end? I think the analyst one is a pretty simple issue.

THE COURT: Go ahead and respond on the analyst point.

MR. DENTON: So, your Honor -- so these are analysts that they mentioned in their complaint. They've known about them from 2022. We picked them because these are the ones who follow the company the most closely. And so these are the ones we are publishing the reports around the key times during the class period. So that's why we picked them.

We subpoenaed them in April. So we did not wait until -- I mean, August 7th is when our fact discovery period ends. We subpoenaed them in April, obviously timely, very timely. In fact, Plaintiffs followed up with a subpoena after that. After two months, in mid-June, we still had not received documents from the analysts. And so what we did at that point was we added those five analyst firms to our disclosures, out of a total abundance of caution here. We don't even have their documents yet, but we don't want to add them on the last day of discovery and have Plaintiffs argue that they were jammed. So we thought, "Two months in advance, we'll add them to our list." Why did we not add

names of individuals? Because we don't even have their documents yet. We're literally telling them as much information as we possibly can. And so the idea that we're supposed to give them information that we don't even have? We're doing this to reserve our rights and to make sure that when we have this trial in 14 months from now, that the Plaintiffs, when we publish our witness list, don't act all surprised and say, "Hey, where did this come from?" So instead, we've done the proper process. We noticed them in advance. When we didn't get documents, we subpoenaed them for depositions. And the Plaintiffs have had two months, and they've used that to sit on their hands. They've issued six new subpoenas in the past couple of days to people who aren't on anybody's initial disclosures, just people that they feel like deposing, but they've left all the analysts. They haven't sent them more subpoenas. They haven't asked for depositions.

And so it's very selective in the way this is being litigated by the other side. It's clear that they don't want the analysts to testify, and we think that's because, as we've now dug into the reports, a lot of the stuff that they say was hidden from the market was well known. It's literally published in an analyst report. And so I think the analysts are going to be bad for them, so rather than actually trying to get at the facts, they're trying to

exclude them from the case.

MR. USLANER: Your Honor, if I may respond briefly?

THE COURT: All right. Go ahead.

MR. USLANER: So with respect to the analysts, Defendants, as they've indicated, knew about these analysts from the get-go. There's no explanation as to why these analysts that they were going to rely upon them were not identified in the initial disclosures a year ago.

With respect to the accusation that we've been sitting on our hands, the moment the Defendants served these subpoenas, we issued our own subpoenas seeking additional documents from these very same analysts. The whole problem with respect to Defendants' course here of identifying these folks so late in the process, which is contrary to the rules, is now we don't have the totality of their documents. These folks won't be able to be deposed in the discovery period, which ends next week. It is frankly Exhibit A to the fact that Defendants' entire approach here with respect to attempting to sandbag through these late disclosures is creating disruption in the discovery schedule, which is impermissible.

THE COURT: I just wanted to clarify one aspect of your response. I understood you to be saying that other analyst firms other than the five firms were also

subpoenaed. I guess from the briefing, I had the impression that there were only five analyst firms that were subpoenaed.

MR. USLANER: I'm sorry if I misspoke, your Honor. No, five analyst firms in total have been subpoenaed. There are 22 analysts out there who covered the company.

THE COURT: Okay.

MR. USLANER: Defendants knew about these analysts from the get-go and yet waited until very shortly before the fact cut-off to indicate that they were going to rely upon them, which we think is wrong.

THE COURT: Okay. All right.

Now, for Defendants, the subpoenas to Doctor Stone and Ms. Reyes seemed to be differently situated from the analyst firms, you know, because they were issued very early during the discovery, and the parties didn't seem to focus on either of these individuals during the deposition phase of the litigation. How was -- that's the impression I have. And how was Lead Plaintiff supposed to know that Defendants intended to call either of these individuals, Doctor Stone or Ms. Reyes at trial, given their minimal importance during the discovery process?

MR. DENTON: And so -- I mean, first, your Honor, just to be clear, we're not necessarily saying we're going to call them at trial. This is really an abundance of

caution here to put them on a list with two months left to go in fact discovery, so that a year from now when we actually have to get ready for trial --

THE COURT: Okay.

MR. DENTON: -- nobody can claim surprise. But on these folks, so Dalia Reyes is -- so both of these people are people who they've indisputably known about since the very beginning of the case, right? In August of 2023, they asked for Dalia Reyes' documents, and we produced scores of them, right? John Stone, they subpoenaed him a year ago, and he's produced his documents, right? And it's been because as this case has evolved, it's been changing. Plaintiff's theory has been very much a moving target, and we're trying to keep up with it. And the -- you know, one of the examples that we talked about in our brief is this new data manipulation theory, right? There's a new theory, nowhere in the complaint, that in the middle of -- I'm sorry.

THE COURT: The data manipulation theory. It was a theory that I touched on in my earlier -- or it was raised in an earlier joint discovery letter.

MR. DENTON: You're right, your Honor. No, I'm -- I understand. I'm not saying we learned about it for the first time in the middle of June. What I'm saying is this has been an evolving thing. The Plaintiff's theory has been

changing as the case goes. And so what happened -- so they raised this in briefing. We had to first understand what they were even saying about it because it's not in the complaint. This is one of the most complicated clinical trial -- it's more complicated than any trial I've ever seen, and I'm told by experts this is about as complicated as it gets, this rare disease trial for, you know, a condition that has deadly side effects.

And so what we've now learned, and it's taken depositions, it's taken a long time -- the Plaintiffs want to litigate, re-adjudicating the definition of remission inside the clinical documents to determine whether remission at four weeks was achieved. And so we're -- we had to diligence this, figure out what they're talking about, find out what their allegations were, then internally investigate on our side, "All right. What did really happen in the trial? What happened with the definition of remission at four weeks, and how was data changed, and why was it changed, and was that -- where was that specified in the protocol upfront that this is how it would be handled?" And so we did all of that. And then once we found out what really happened, then we needed to start determining who to tell the story through with our witnesses. And then on top of that, we have all these depositions that have occurred over the last several weeks.

And so, your Honor, what we're doing, we're trying to keep up with this. And again, two months before the end of fact discovery to supplement your disclosures is not trying to sandbag someone and hurt them here. It's really trying to be as upfront as we can about where we are in the case and telling you, "We'll continue to supplement as we learn more."

And so Ms. Reyes, for example, she was the head of commercialization at the company. And so if you look at it, she was primarily involved after the class period, right? She's the one who's involved, taking the drug to market once it's already approved. This should all be after the class period. So she's relevant in that she's an employee, she's touched the ADVOCATE trial, she saw it over time. And so we included her as a custodian. She was in the case. But now that we're getting to this point where they're saying, "Well, actually, the trial didn't demonstrate that this was a good drug that helps people. You snuck it by the FDA by lying about the data and changing it," right? And so Ms. Reyes is -- and that ended up resulting in this very narrow label, right? And Plaintiffs are saying, "We couldn't sell the product to many people." Ms. Reyes is going to respond to all of that. She's going to say, "No, the label that we ended up with was similar to the label that we thought it was going to be in the beginning. We did not consider it a

narrow label. I've been in charge of marketing this product to people, and I am -- and I can tell you this is a drug that works. The clinical trial did work properly, and it's actually proven out since then because we have people where this drug is changing their lives," right?

And so we knew who Ms. Reyes was. We included her as a custodian. She's been here all along. However, her level of importance to the case has changed as Plaintiff's case has changed. And when they change their case, we get to try to keep up with them. It's not a -- it shouldn't be a one way-street, your Honor.

THE COURT: So you think that they should have known about her through (Zoom glitch) should have been able to understand that she had become more important.

MR. DENTON: And they -- and -- well, it's a two-part thing, your Honor. First, they've been aware all along of her role, her involvement, exactly what she does, who she is, what her responsibilities are, everything. And that's been since 2023. And then she had us make her a defense custodian. And then in October of 2023, they separately subpoenaed her. She's been -- we -- 67,000 produced documents on. She's been referenced in multiple depositions, including these recent ones that have caused us to amend our disclosures. So she's all over the record, your Honor. They know exactly who she is, and they -- and

the thing is they've got extra depositions. They've chosen not to use them on her. They've sat here for two months complaining. They haven't used them on her, because they know what she's going to say. They want her out of the trial. They don't want to get a fair chance at discovery. They want her out. And we got the same problem with Mr. Stone, who was --

THE COURT: Okay. Before we turn to Mr. Stone, Mr. Uslaner, will you please respond to these various points that Mr. Denton is making in -- with respect to Ms. Reyes?

MR. USLANER: Absolutely, your Honor. First off, with respect to his suggestion that they provided us with sufficient time, I would direct your Honor to Judge Westmore's decision in the Baird v. BlackRock case, which, frankly, is on all fours with this case. And the situation in that case, 10 additional witnesses were added to a Rule 26 disclosure with two months left -- a month and a half left in the discovery period, which is identical to the situation here, and Judge Westmore correctly struck the disclosures.

With regard to Dalia Reyes, she's never been deposed, she's barely been mentioned in any depositions to date, she's never been mentioned by Defendants in any brief they filed, she authored two e-mails, more than three --

THE COURT: So you're saying she's hardly ever

been referenced in any --

MR. USLANER: She's -- she hasn't been referenced at all in any meaningful respect.

THE COURT: Mr. Denton is saying the opposite.

MR. USLANER: Well, with all respect --

THE COURT: Mr. Denton is saying the opposite. So, Mr. Denton, why don't you give us the depositions?

MR. DENTON: I actually have the excerpts here, your Honor. So she was discussed in the deposition of Jane (phonetic) Helenson (phonetic) on pages 334 to 336, and I'm happy to provide copies of these to your Honor afterwards. She was discussed in the Kas (phonetic) Kelleher deposition on pages 295 and 296. She was discussed in the Susan Kanaya deposition on page 281. And -- well, those are the three from Ms. Reyes, and the other I had here was Mr. Stone, but we can talk --

MR. USLANER: There have been -- your Honor, there have been 20 depositions in the case. Judge Tigar in his decision in Twitter specifically held that a passing reference to witnesses in depositions does not constitute making known that a defendant is going to rely upon those witnesses at trial or at summary judgment. What Mr. Denton just described to you is passing references during a massive discovery case which has involved dozens of depositions, and Ms. Dalia Reyes has barely been mentioned in any of them.

Defendants have not called her as a deponent, Defendants have not sought her documents, Defendants have never mentioned her in any briefing. I -- scout's honor, we had no idea that they were going to seek to rely upon Ms. Reyes at trial or at summary judgment, which is why we were shocked and brought this motion. And with respect to Doctor Stone, likewise. He's -- he has not -- if -- unless your Honor wants to continue on Ms. Reyes.

THE COURT: (Zoom glitch) your reliance on these depositions, I mean -- and describe what they say about her or -- I mean, you could read from the deposition transcripts. This is --

MR. USLANER: Your Honor, I attended them all. Mr. Denton just joined the case. I attended all the depositions --

THE COURT: (Zoom glitch).

MR. USLANER: They literally are a reference to her having sent or received a document and her title. There's no substantive discussion with respect to her. But, Mr. Denton, feel free, please, to read the transcript excerpts.

THE COURT: Or point to some indication that it's more than, "Oh, yes, Ms. Reyes received this particular e-mail," or something like that.

MR. DENTON: So I'm happy to go through it in more

detail, your Honor. But just to be clear, we're not saying -- and the cases are clear, yes, if there's just mere passing references to somebody in the discovery record somewhere, that isn't good enough. Of course, what my adversary is ignoring here is their subpoena, the fact that she was one of our document custodians, the 67,000 documents. When you put all of that together with the deposition record, it's more than sufficient here, your Honor. And, frankly, you know, we distinguish the cases in our brief. They do not have any cases that are even in the same area code here, and they cite over and over again the Baird, Johnson, and Spencer cases, because those are the only ones they have that are even in discovery. Instead, it's all summary judgment cases and trial witnesses and all of that stuff that obviously doesn't apply here.

And so the best one they said they've come up with is Baird, where, first off, the judge did not just strike the disclosures. There were 29 new witnesses disclosed, and 8 were stricken. But it was only after the defendant stipulated with the plaintiff that the plaintiff would not conduct any more discovery and then tried to drop these new names and say, "Too bad. You already stipulated. No more discovery. You can't take their depositions." We're in the opposite scenario. We disclosed two months ago. We've urged them, "Take any depositions you want," and they just

won't do it.

THE COURT: Yeah. Well, you know, there were 31 custodians here, so it's quite a few to determine who (Zoom glitch).

MR. USLANER: Your Honor, I think you're correct. We know that there are 31 custodians in this case. How are we to know which of these custodians Defendants may use as a trial witness? That's why the rule obligates disclosure of that.

With respect to both Dalia Reyes and Doctor Stone, they weren't involved at all in the data manipulation. The data manipulation involved three witnesses, largely at ChemoCentryx, neither -- none of whom are Dalia Reyes or Doctor Stone.

THE COURT: Okay. Mr. Denton, how were Lead Plaintiffs supposed to know that Mr. -- Doctor Stone -- excuse me -- was potentially going to be called at trial?

MR. DENTON: Yeah. So this is another one. And your Honor, again, I don't understand how we are supposed to disclose things to them before we actually know them. At no point have they told us, "Oh, this witness you knew was critical to this issue at this point in time." Instead, they're just complaining. It's been two -- you know, you gave it to us two months in advance.

So I don't really understand the argument here, but on

John Stone, he was the consultant who created the liver toxicity test used in the study. Again, something that we didn't think was terribly important since that was not the primary endpoint of the study and not what we were supposedly litigating. But the secondary endpoints have taken on a new significance for the Plaintiffs throughout discovery, and they're focused on this GTI, Glucocorticoid Toxicity Index and the FDA's criticism of that, and that is Mr. Stone's domain. And so that's why we have put Mr. Stone on there, another person who, again, they subpoenaed him in 2023, he produced documents, he's on over 1,000 documents in the case, he too has come up in at least one of the depositions.

And, again, we're in discovery. This is when you hone your case theories. This is when you figure out who your important witnesses are. And that's what we've been doing. And so, again, I think we would be in a very different scenario if on August 7th is our fact discovery deadline and August 6, we drop new names on them. But they've had two months, and they've made the strategic choice not to take discovery from these people -- not to take further discovery. They got discovery from him, but not to take more.

THE COURT: Okay.

MR. USLANER: Your --

THE COURT: So this is another -- oh, do you want to respond?

MR. USLANER: I do, your Honor. First off, with the GTI secondary endpoint, I just ran a search. GTI, the secondary endpoint, is referred to 123 times in our complaint. This -- the GTI secondary endpoint and Defendants' misrepresentations concerning the GTI endpoint has been a significant component of this case since Judge Tigar and before Judge Tigar denied Defendants' motion to dismiss. Doctor Stone has never been deposed. He's only been mentioned once in 20 depositions. He's never been mentioned by Defendants in any brief. He didn't author any of the 380 exhibits. We had no idea that Defendants at the very end of fact discovery were going to say, "Aha, we're going to rely upon him at trial." The rules, the case law, Judge Westmore's decision, and Judge Tigar's decision in Twitter all say that what has been done here is wrong and, accordingly, Doctor Stone should be struck from the witness list.

THE COURT: Okay. The GTI secondary endpoint -- you know, theory or really a significant focus in the briefing, and that's -- it's an explanation for why the Plaintiff subpoenaed Doctor Stone. So this is feeling kind of like a newer element even though it's in the complaint. So, you know, I will consider it. But it's just -- if Mr.

Denton wants to respond to that -- to what Mr. Uslaner is arguing, he can. Otherwise, I would like to move on to my other questions.

MR. DENTON: Happy to move on unless there's anything specific you would like for me, your Honor.

THE COURT: Okay. All right. So this is my other question for Defendants. You claim that Ms. -- Medspace (sic), Doctor Specs (phonetic), Doctor Hagno, Mr. Massey (phonetic) -- and forgive me if I'm mispronouncing any of these names -- that they were disclosed in response to Lead Plaintiff's "new theory" that ChemoCentryx manipulated clinical trial data to trick the FDA into approving an ineffective drug, you know, firstly in Lead Plaintiff's class certification reply filed in January. But this data manipulation theory, which I mentioned just a while ago, was in the first joint discovery letter that I had to decide, and you mentioned in your supplemental brief that this theory was coming up during Doctor Richard Glass' deposition which occurred on December 1st, 2023. So, clearly the -- in my view, we've had -- Defendants had more than six months notice of this new theory, so why wait until it's late June to update the rule 20(a) -- 26(a) disclosures to add those four witnesses?

MR. DENTON: Your Honor, this has been very much an evolving process throughout discovery here. So, yes, we

heard their theory that we had manipulated data, but we --

THE COURT: Yeah. I just --

MR. DENTON: -- didn't know what that meant. And so I explained to your Honor before kind of all the different steps that we took there. I won't re-explain that, understood, but --

THE COURT: Just what I understood you to be saying earlier in the hearing was, the shape of the claims is shifting and so forth, but --

MR. DENTON: It becomes center stage. So, your Honor -- so you'll recall, when they put in that brief making this data manipulation argument, our response was, "Whoa, that's not in the case. That should be stricken. That shouldn't be allowed at all," right? And then the Court issued a ruling. And in that ruling, the Court said, "I'm not going to consider that issue. I'm not going to consider the data manipulation." Our hope until up that -- up until that point was that this would not be in the case. It would be very clear it's not the case. And from the Court's ruling, it wasn't clear that it's in the case. The Court was expressly declining to consider that issue. And our Plaintiffs have taken it and run with it. I mean, this is all over the deposition. We were just in a deposition yesterday, and this was all over the deposition of Pirow Bekker going on and on about data manipulation. And it's a

theory that, honestly, we've thought multiple times they would drop because it's made up. Literally, the trial protocol says we're going to have people collect the data. It's going to be collected by various different people. And it's very complicated data that requires some discretion in order to figure out are people worsening, are they not worsening?

And so we had a protocol, and the protocol involved, afterwards, some limited people would be unblinded to make sure the data was adjudicated consistently and correctly, and some changes would be made if needed. And now our Plaintiffs have jumped on it. There was a change made, and they've said that we've been manipulating the data, that we were messing with it, and that we were trying to trick the FDA.

This did not all come out in one piece. This has been an evolving theory. It's one that we've tried to squash a few times and say, "This shouldn't be in the case," but they've pushed it, and now we're at the point we do have to respond to it. And so we've spent discovery figuring out who are our best witnesses on this, what do we have to say about it, and trying to put together our case.

And, again, we've -- we thought we were doing this far in advance, your Honor. I thought giving somebody two months notice before discovery is over as to who might be on

our witness list in a year and change was plenty of time, but they've had an issue with it. But your Honor, it --

THE COURT: Well, this is in isolation -- two months in advance of fact discovery could seem like a reasonable amount of time, but this is two witnesses amongst, you know, numerous others, 11. So --

MR. DENTON: And --

THE COURT: -- that's --

MR. USLANER: Your Honor, if I may --

MR. DENTON: (Indiscernible).

THE COURT: Go ahead.

MR. USLANER: I'm sorry. Go ahead, please.

THE COURT: We'll let Mr. Denton finish.

MR. USLANER: Of course.

MR. DENTON: So, your Honor, and just on the specific witnesses, just so you know, so with Medpace, we have basically the same issue as the analysts. The Plaintiff subpoenaed them back in 2023, and then by the time of our supplemental disclosures, Medpace still had not produced documents. They still had not turned them over. So, again, out of an abundance of caution, we added Medpace to our witness list.

Now, again, Plaintiffs are saying, "Oh, how did we know Medpace was relevant? How do we know Medpace would be involved?" Your Honor, they are in 100 -- on 107,000

documents in the case, Medpace is mentioned. I believe that's about 20-percent of the entire record. Medpace ran the trial. The Plaintiffs know exactly who Medpace is and what their involvement was.

And then as for these two physicians, these are ones we're adding directly in response to their theory. These were the people who actually collected the data. The data that the Plaintiffs are now saying was manipulated afterwards and changed, these are the people who are going to say, "No, no, no, we delivered our data. We followed the protocol. The protocol said people would be unblinded to go do this. They were unblinded to go do it, and they did it properly, and we have no issues with the result." And that's a very direct response to their new theory that has been evolving through depositions, including yesterday.

MR. USLANER: Your Honor, if I may.

THE COURT: Go ahead. Uh-huh.

MR. USLANER: So Defendants' argument with respect to this fails for three reasons. Number one, the -- as your Honor noted, the data manipulation discovery has been going on for seven months. Number two, the folks who they've identified to testify have absolutely no relationship to the data monitoring -- excuse me -- to the data manipulation. For example, Doctor -- Doctor Hagno and Specs are two of 238 investigators who, as Defendants note in their brief,

treated patients during the ADVOCATE. No party has deposed them. They've never been mentioned in any of the depositions. They weren't involved in the data manipulation. The subjects on which Defendants have added them are not data manipulation. Their use of the drug, their FDA approval process, they have nothing to do with data manipulation.

Additionally, Mr. Massey, he is a patient. They are trying to use a patient and have him testify about the use of Tavneos. He has no relevance whatsoever to data manipulation, which, again, as your Honor noted, was disclosed seven months ago. The subject matter which they have identified Mr. Massey, a patient, one of thousands of patients is use of Tavneos, which, again, has absolutely no relationship to data manipulation.

With respect to Medpace, Lead Plaintiff recognizes that Medpace is relevant. We absolutely do. Defendants knew they were relevant as well. Defendants waited a year and a half to identify them on their disclosures. They don't even list who at Medpace is going to be a trial witness. Medpace is differently situated than the others. We recognize that. We did subpoena them, of course, but we have been operating with the working understanding, based on their disclosures, that they were not relying upon Medpace at trial. That is why with respect to Medpace, we moved to strike Medpace. We

absolutely understand Medpace is relevant. We absolutely sought documents from Medpace. But what Judge Tigar and what Judge Westmore correctly note is that the supplementation rules require a defendant to identify who they are going to rely upon in a timely manner, and that was not done. We don't even have the name of an individual at Medpace who they're going to be relying upon and discovery closes next week. Thank you, your Honor.

THE COURT: So space -- you know, clearly it's not a part of this case in that it ran a clinical trial. So why wouldn't -- without even an amendment, Mr. Denton, why wouldn't Defendants include Medspace (sic) in the initial disclosures? It just seems like they have a central role. But help me understand.

MR. DENTON: Because from our perspective, this case was never about whether the trial was run properly or improperly. The question was about the discussions with the FDA, because that's the Plaintiff's entire theory. The Plaintiff's entire theory is we -- the FDA was telling us, "There's no way we're ever approving this drug," and then at the same time were saying things to the market that are more rosy than that.

And so that's the theory of the case. And then that's why when we get to discovery and they start this data manipulation theory that we've tried to squash a few times

now, then eventually we do have to respond to it. And the way to respond to that is, "Okay. Bring in the people who did the clinical trial and let them all tell you that nobody manipulated any data." And I think that's a response that we've got to be able to give because, you know, like, opposing counsel is right, like, these are the investigators in the trial and the entity that ran the trial, and they're responding to the theory that this is a terrible drug that never should have been approved and that it was based on lies to the FDA. And in order to tell the story, even though that's not what the claim is about, even though that's not what the case is about, we have to be able to respond at trial to them telling this one-sided and incorrect story.

MR. USLANER: And, your Honor, just with respect to that, again, the data manipulation component of discovery came out seven months ago. With respect to all of these folks, Medpace, Doctor Spano (phonetic), Doctor Specs, and the patient, none of them are being identified to testify with respect to the data manipulation. They're being identified to test on completely different things, including the use of Tavneos. They're disclosed late -- too late in the process, well after our ability to conduct depositions of them, well after our ability to redepose folks who've been deposed previously on the subject matter. And we think

it's inappropriate, and we don't think that we need to completely redo discovery because Defendants, you know, have changed their tune and now want to take these folks as trial witnesses.

MR. DENTON: Your Honor, may I briefly respond on the redeposing point that Plaintiff has brought up? Your -- they keep saying that. And as I mentioned, they've had two months now to take discovery. They've chose -- they made a strategic choice, "Don't do that. They're not actually going after them," but then on redeposing, they're saying, "And we need to go back and ask every witness we already deposed all about these people"? Well, your Honor, we had three days of depositions this week. They didn't ask about any of them. They didn't ask about these people. They didn't -- I think Ms. Reyes is the only name that came up, and it was in the context of a document, but Christian Pagno (phonetic) didn't come up, Erlich (phonetic) Specs didn't come up, Glenn (phonetic) Massey didn't come up. They didn't even raise these people. So the idea that they're worried that they need to go back and ask every witness about them, they're not even doing that contemporaneously.

MR. USLANER: Your Honor, with respect to that, these witnesses are just not relevant to the witnesses who were recently deposed. They're, frankly, not relevant to the case, which is why they haven't been -- Defendants

haven't asked a single question of any witness about these folks. They haven't mentioned them in any briefing. They haven't been the subject of any discovery responses or anything of that nature, which is why we had no -- they did not make it known that they were going to rely upon them in a timely manner, which is the operative test.

THE COURT: Yeah, I think, you know, on the briefing, I wasn't -- there wasn't much of an explanation as to why you need to reopen positions. I know it was your alternative request, but --

MR. USLANER: Yeah, we --

THE COURT: -- even if (Zoom glitch) allow -- don't strike all of the witnesses, tell me with greater detail why I would need to reopen the depositions.

MR. USLANER: Your Honor, I mean, our --

THE COURT: Prejudice, and if you learn something more, then you could come back and raise it, possibly, but --

MR. USLANER: Our view, undoubtedly, is that the witnesses should be struck, that there -- and as a result, there would be no need to inquire as to additional witnesses with respect to any of these folks. That said, you know, we do believe that we would be entitled to fulsome discovery so that we can test these folks at trial, including their -- and the Defendants' communications with them haven't been

produced. We haven't received the documents from the witnesses themselves. You know, Glenn Massey, I don't even know who he is, he's never been mentioned. This type of sandbagging at the end of discovery is not permitted, and, you know, it would completely disrupt the schedule that Judge Tigar has specifically said cannot be altered.

And we have worked so hard to keep to this schedule. We have deposed every single witness on Defendants' initial disclosures, the one that was correctly served at the start. We relied upon that in good faith. And for Defendants now at the last minute to add all these folks' names, to double it -- double the list is improper, which is why we brought this motion, your Honor.

THE COURT: Okay. All right. Thank you.

Any final words, Mr. Denton?

MR. DENTON: So, first, thank you, your Honor, for the time. Thank you for taking the time to hear this dispute, and we regret that we weren't able to sort it out amongst ourselves. We've actually had a pretty good track record of sorting some things out, and so -- but I appreciate your Honor's attention.

And the only thing I would emphasize for your Honor is, you know, to the extent it matters here, this was us doing the best we could. Again, I thought two months in advance was a long time. And I guess the question is, if two months

isn't enough, what's the cut-off here, like, before our witnesses start getting struck? Like, is it three months? Is it four months? Is it two months after it's first mentioned? And I think the cases don't have that type of bright line standard because that's exactly not the type of calculation that the federal rules require. Instead, 26(e) says pretty clearly, "You have a duty to supplement. We expect you to supplement as you learn things." And so we thought we did the right thing here, you know, egg on our face if we should have done it with two and a half months or three months rather than two months, but we did the best we could as we learned facts, and we're trying here, our goal is not to sandbag Plaintiff. I don't think we have, but to the extent there was any prejudice, we would want to make sure that they get whatever discovery they need. And they -- and we've been waiting for that. They just wouldn't chime in with what they want. It's been an all or nothing. It's been throw everybody out or redo discovery.

So in any event, we appreciate your Honor's time, but we are trying to do the right thing here.

MR. USLANER: Your Honor, I just need to correct the record on one thing. Mr. Denton continues to say two months. In actuality, it was 39 days from the second supplemental disclosure, not two months. And for the first supplemental disclosure, it was 49 days. And in the Baird

v. BlackRock case, that was precisely the same amount of time. With that, your Honor, we do thank you for your time. We really do appreciate your making yourself available for this dispute.

THE COURT: All right. Thank you both, and I'll take this under submission.

MR. DENTON: Thank you, your Honor, so much.

THE COURT: Thank you.

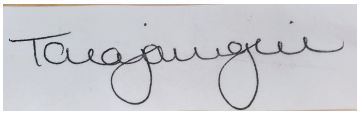
THE CLERK: Court is now adjourned.

(Proceedings adjourned at 11:52 a.m.)

CERTIFICATE OF TRANSCRIBER

I certify that the foregoing is a true and correct transcript, to the best of my ability, of the above pages of the official electronic sound recording provided to me by the U.S. District Court, Northern District of California, of the proceedings taken on the date and time previously stated in the above matter.

I further certify that I am neither counsel for, related to, nor employed by any of the parties to the action in which this hearing was taken; and, further, that I am not financially nor otherwise interested in the outcome of the action.



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